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**Rejection Objection Deadline:  
Undetermined**

*Attorneys for Demetrios L. Kozonis c/o Mega Properties, Inc.*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION., et al., <sup>1</sup>	:	Case No. 18-23538-RDD
	:	
Debtors.	:	(Jointly Administered)
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**OBJECTION OF DEMETRIOS L. KOZONIS TO NOTICE OF REJECTION OF  
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND  
ABANDONMENT OF PROPERTY IN CONNECTION THEREWITH**

TO THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:

Demetrios L. Kozonis c/o Mega Properties, Inc. (“DLK”), by and through his attorneys, Kozonis & Klinger, Ltd, files this objection to *the notice of rejection of certain unexpired leases of nonresidential real property and abandonment of property in connection therewith* [DE 1076] (the “Rejection Notice”) filed by Sears Holdings Corporations, et al. (the “Debtors”).

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax Identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

In support of this objection Demetrios respectfully sets forth and represents:

**OBJECTION TO REJECTION DATE**

1. The Debtors filed voluntary petitions under Chapter 11 of the Title 11 of the United States Code on October 15, 2018 (the “Petition Date”).
2. On December 6, 2018, Debtors filed a Rejection Notice through which they gave “notice of their intent to reject lease(s) set forth on **Annex A**. . .”.
3. **Annex A** includes as Store Id 8350 the real property known as 7310 W. 87<sup>th</sup> St., Bridgeview, IL 60455 (the “Premises”).
4. **Annex A** also identified property to be abandoned at that location as “Furniture located within the property.”
5. Demetrios L. Kozonis as Trustee of the Demetrios L. Kozonis Trust (Trust Number 13151) is the Commercial Lessor/Owner of the real property at 7310 W. 87<sup>th</sup> St., Bridgeview, IL 60455, identified in [DE 1076] as Store Id 8350.
6. On June 21, 1995 Debtor, Sears, Roebuck and Co., entered into a lease with Capitol Ventures. CK Properties, Inc., successor in interest landlord to Capitol Ventures, thereafter assigned the lease to Demetrios L. Kozonis as Trustee of the Demetrios L. Kozonis Trust. Thereafter, the lease was amended two more times with the final amendment to the lease being the Fifth Amendment to the Lease. This Fifth Amendment extended the term of the lease up to and including May 12, 2019. The above lease assignments and amendments are hereinafter referred to as (the “Lease”). Ex. A, the Lease.
7. The Lease is managed by Mega Properties, Inc.
8. Paragraph Three of the Rejection Notice provides for the effective date of rejection, unless otherwise ordered by this Court, as being the latter of:

- i. Service and filing of the Rejection Notice, and
- ii. The date the Debtors have surrendered the leased premises via the delivery of the keys, key codes, and alarm codes to the premises, as applicable, to the Landlord,

OR

If not delivering such keys or codes, providing notice that the landlord may re-let the premises . . .

9. Paragraph three of the Rejection Notice refers to estimated dates in **Annex A**, with the estimated date pertaining to the leased Premises, being December 31, 2018.

10. Paragraph six of the Rejection Notice provides that parties wishing to object to the Rejection Notice must file and serve an “Objection” “no later than ten (10) calendar days after the date of filing and service of this Rejection Notice”.

**DLK Was Never Served**

11. The Notice provisions under the Bankruptcy Rules apply in proceedings to reject an unexpired lease. *See In re Duhon*, 352 B.R. 546 (Bankr. D. Mass. 2006)(referring specifically to Rules 6006 and 9014 (and by reference therein, 7004 and 9006)); *See also, In re Burger Boys, Inc.* 94 F.3d 755 (2d Cir. 1996).

12. “Failure to provide the appropriate notice may result in the court finding the assumption or rejection to be invalid.” *In re Duhon*, 352 B.R. 546 (Bankr. D. Mass. 2006); *Referring to, e.g., S. St. Seaport Ltd. P'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 763 (2d Cir.1996) (order approving assumption vacated where non-debtor party not provided appropriate notice and opportunity to be heard); *In re Parkwood Realty Corp.*, 157 B.R. 687, 691

(Bankr.W.D.Wash.1993) (no effective rejection of contract through plan where non-debtor party did not receive notice).

13. Bankruptcy Rule 6006 provides that “[a] proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014.”

14. Bankruptcy Rule 9014 provides that service be effected “in the manner provided for . . . by Rule 7004. . . ” which allows for mailing a copy, first class mail, to the agent or the party, in this case Creditor.

15. DLK never received the Rejection Notice. See Ex. B, Affidavit of Linda Nalley.

16. The Rejection Notice lists the address for Demetrios L. Kozonis c/o Mega Properties, Inc. as 4849 N. Milwaukee Avenue, Suite 302, Chicago Illinois 60603.

17. The actual address for Demetrios L. Kozonis c/o Mega Properties, Inc. is 4849 N. Milwaukee Avenue, Suite 302, Chicago Illinois 60630. See Ex. B.

18. DLK hypothesizes that the reason it was not served is because Debtor transcribed the wrong zip code onto **Annex A** and additionally onto any mailing envelope intended to carry the Rejection Notice to DLK. The correct zip code is 60630 and not 60603.

19. Regardless, DLK never received the Rejection Notice. Ex. B.

**Objection Date Should Be Waived**

20. According to the Rejection Notice, an objecting Creditor must object within 10 days after “filing and service”. Debtor never effected service of the Rejection Notice, most likely because it used the wrong zip code.

21. As such DLK’s Objection herein should not be barred by a Rejection Objection Deadline that DLK was never provided.

**Lease Rejection Date Should Be Amended**

22. According to the Rejection Notice, the effective date of the lease rejection can be established as the later of two dates. The first option is by “Service and filing of the Rejection Notice.”

23. As stated above, DLK was not served with the Rejection Notice.

24. The second option allows for two possibilities, the first wherein the Debtor surrenders the leased premises via the delivery of keys or codes. The Premises in question were secured with actual keys. Ex. B.

25. The Debtor did not surrender keys to DLK. Ex. B.

26. The second possibility is one wherein Debtor can surrender the leased premises by providing notice that the landlord may re-let the premises.

27. The Debtor did not provide any notice to DLK that DLK may re-let the premises. Ex. B.

28. To the contrary, DLK attempted to contact the tenant on multiple occasions to ascertain tenant’s intentions. Ex. B, C, D. At no time did tenant ever pick up DLK’s phone calls or return any of DLK’s voice mail or email messages. Ex. B, C, D.

29. DLK observed furniture in the Premises but apparently no one using the Premises. Ex. B.

30. At that time DLK sought to investigate its options and obligations. Ex. B.

31. Based on that investigation DLK learned of the Rejection Notice in the middle of March, 2019. Ex. B.

32. Upon learning of the Rejection Notice, DLK took steps to have the abandoned property removed.

33. A portion of the abandoned property was removed on March 21, 2019. Ex. B.

34. A second portion of the abandoned property is currently scheduled to be removed on April 15, 2019. Ex. B.

35. The third and hopefully final portion of the abandoned property will be removed upon further scheduling after April 15, 2019. Ex. B.

36. As such, DLK respectfully requests that this Court extend the applicable Rejection date for the DLK Commercial Lease until such time as the DLK is able to fully remove the abandoned property.

37. It is the intent of DLK to further advise this Court via affidavit upon the final removal of all the abandoned property from the Premises.

Dated: Chicago, Illinois  
April 10, 2019

KOZONIS & KLINGER, LTD  
*Attorneys for Demetrios L. Kozonis,  
c/o Mega Properties, Inc.*

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SEARS HOLDINGS CORPORATION., et al., <sup>1</sup>	: Case No. 18-23538-RDD
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Debtors.	: (Jointly Administered)
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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on April 10, 2019 a copy of the following documents:

- OBJECTION OF DEMETRIOS L. KOZONIS TO NOTICE OF REJECTION OF CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND ABANDONMENT OF PROPERTY IN CONNECTION THEREWITH
- Exhibit A (Debtor's Lease and Extension) to the above Motion;
- Exhibit B (Affidavit of Linda Nalley) to the above Motion;
- Exhibit C (Emails between Linda Nalley and Charlotte Taylor);
- Exhibit D (December 13, 2018 Email from Linda Nalley to Charlotte Taylor).

were caused to be served on each party in interest list below by placing copies of the above documents in first class mail, properly addressed to the below listed parties, proper postage prepaid on April 10, 2019.

(i) Sears Holding Corporation, 3333 Beverly Road, Hoffman Estates, Illinois 60179  
For Debtors

(ii) Weil, Gotshal & Mangers, LLP, 767 Fifth Avenue, New York, New York 10153  
Attorneys for the Debtors  
Attn: Ray C. Schrock, P.C.,  
Jacqueline Marcus, Esq.,  
Garrett A. Fail. Esq.,

Sunny Singh, Esq.,  
Jessica Liou, Esq.

- (iii) Sears, Roebuck and Co., 3333 Beverly Road, Hoffman Estates, Illinois 60179  
Attn: Vice President, Real Estate Department 824RE
- (iv) Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006,  
New York, New York 10014  
Attn: Paul Schwartzberg, Esq.,  
Richard Morrissey, Esq.
- (v) Skadden, Arps, Slate, Meagher & Flom, LLP, 4 Times Square, New York, New  
York 10036  
Counsel for the DIP ABL Agent  
Attn: Paul D. Leake, Esq.,  
Shana A. Elberg, Esq.  
George R. Howard, Esq.
- (vi) Akin Gump Strauss & Feld LLP, One Bryant Park, New York, NY 10036  
Counsel for the Official Committee of Unsecured Creditors  
Attn: Philip C. Dublin, Esq.,  
Ira Dizengoff, Esq.,  
Sara Lynne Brauner, Esq.
- (vii) Sears, Roebuck and Co., 3333 Beverly Road, Hoffman Estates, Illinois 60179  
Attn: Assistant General Counsel, Real Estate, Department 766X